

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WENDY A. MAKI,

Plaintiff,

v.

BREMERTON SCHOOL DISTRICT, LINDA  
SULLIVAN-DUDZIC, and her marital  
community, SUSAN K. STONE, and her  
marital community,

Defendants.

No. 3:19-cv-05901-RJB

DEFENDANTS' TRIAL BRIEF

TRIAL: JULY 7, 2021

Defendants Bremerton School District and Susan K. Stone respectfully submit this abbreviated trial brief for the Court's consideration.

**I. STATEMENT OF PERTINENT FACTS**

Plaintiff Wendy Maki, a special education teacher at Kitsap Lake Elementary School in the Bremerton School District (hereinafter "BSD") since 2016, alleges that BSD retaliated against her after she reported inappropriate touching by a paraeducator. BSD conducted an investigation, and concluded that there were "boundary" concerns with the paraeducator, but no sexual misconduct occurred. The paraeducator was reprimanded, and continues to work in the school district.

1 Ms. Maki alleges that because she reported inappropriate touching, BSD retaliated  
2 against her on September 26, 2017, by confining her in a classroom for a few hours only on  
3 September 26 with her own special education student, G.C., then a seven-year-old, who—it  
4 was well known—could become agitated or violent.

5 She also alleges that BSD was negligent “when they confined Plaintiff alone in her  
6 classroom with a known violent student; and when they failed to protect Plaintiff from harm.”  
7 Dkt. 37 at 18-19. Plaintiff alleges that the “confinement” proximately caused her Post-  
8 Traumatic Stress Syndrome. Plaintiff also alleges that BSD was negligent because it “failed to  
9 provide Plaintiff training and support necessary to work with violent students; and when they  
10 escalated the danger to Plaintiff by inconsistently implementing” certain “policies and  
11 procedures.” Dkt. 6 at 37:18-22.

12 The evidence will show that Ms. Maki *requested*, examined, discussed with Defendant  
13 Susan Stone, and was *fully aware* that a fire hose would be placed over a door hinge to keep  
14 G.C. from eloping. The security camera shows Ms. Maki observing the placement of the fire  
15 hose that day. Ms. Maki is on the right side of this photo.  
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Ms. Maki's classroom (Room 112) was connected to another classroom (Room 111) by a shared kitchen. Ms. Maki contends that she did not have her keys with her when she entered Room 112. Obviously, keys would have allowed her to leave her classroom—anytime—through the shared kitchen that connected to Room 111.

The evidence will show that Ms. Maki was never, in fact, “confined” to the classroom. Despite choosing to leave her keys elsewhere instead of bringing them with her, Ms. Maki had three opportunities to leave Room 112 during the few hours she was with G.C. First, the school nurse entered the classroom to examine G.C. Ms. Maki remained in the classroom after the nurse left and the fire hose was placed back over the hinge. Second, Ms. Maki could have asked

1 staff in adjoining Room 111 to let her out. Her own mother was a substitute teacher in the  
2 adjoining room.

3 The evidence will show that she never attempted to get the staff's attention during her  
4 "confinement." In contrast, her coworker, Ellen Strong, did get the attention of staff in the  
5 adjoining classroom when she, too, was confined in the classroom with G.C. Third, a coworker,  
6 Danielle Palomino, removed the fire hose and opened the door on the day of incident because  
7 G.C.'s body got stuck between the door and door frame.  
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9 Ms. Maki also had her radio with her while she was with G.C. According to her  
10 Amended Complaint, she "radioed for help," which is when Ms. Palomino arrived to remove  
11 the fire hose from the door hinge and assist with helping G.C., who was stuck. Ms. Maki  
12 could have left the room with Ms. Palomino.  
13

14 Ms. Maki left BSD on October 17, 2017, and has not worked since that time due to  
15 "psychological and psychiatric care for severe PTSD" proximately caused by being in the room  
16 with G.C. on September 26. Dkt. 6 at 36:13.

17 While there are many, many detailed allegations in this case, the foregoing is the  
18 backbone. On September 25, 2019, she filed a lawsuit against BSD, Susan Stone (then  
19 Principal of Kitsap Lake Elementary), and Linda Sullivan-Dudzic, (then Director of  
20 Elementary Education and Special Programs for the Bremerton School District), followed by  
21 an amended complaint on October 8, 2019. Those causes of action are addressed below.  
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23 On March 14, 2020, Ms. Maki sought to file a police report for "unlawful  
24 imprisonment." Detective Matthew Thuring interviewed Ms. Maki regarding the September  
25 26, 2017 incident, and she admitted that (1) she voluntarily did not bring her keys with her into  
26 the classroom while with G.C.; (2) she did, in fact, have her school handheld radio with her on  
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September 26 while in the classroom with G.C.; (3) she used her radio to call for help when G.C. got stuck in the door; (4) a security video—which Ms. Maki obtained—showed her entering and exiting Room 111 while the fire hose was in place; and (5) a nurse entered the classroom to examine G.C., but Ms. Maki did not leave. Detective Thuring concluded that Ms. Maki “clearly knows she wasn’t locked in room 112 against her will and her allegation [of unlawful imprisonment] may qualify as a false report of a crime.” Accordingly, all charges were dropped.

Witnesses will testify that Ms. Maki was not “locked” or “confined” in the classroom with G.C., and could have, in fact, left the classroom. In sum, the jury will learn that Ms. Maki clearly knew that she was not locked in Room 112 against her will. Thus, the BSD did not retaliate against her for reporting her concerns about an educator inappropriately touching a student. Finally, the jury will hear that BSD provided Ms. Maki with training and support necessary to work with violent students. However, Ms. Maki ignored BSD’s training and policies. Instead, *she engaged in behavior that consistently escalated G.C.’s violent behavior.* After Ms. Maki stopped “teaching” G.C., his behavior significantly improved.

## II. THE LAW

Ms. Maki filed a lawsuit against BSD, Ms. Stone, and Ms. Sullivan-Dudzic, asserting the following:

- (1) False Imprisonment against all Defendants, which she dismissed last week, as confirmed at the June 25, 2021 pre-trial conference (the parties will submit a stipulation and order of dismissal to the Court).
- (2) Violations of the Fourth Amendment against all Defendants, which she dismissed last week, as confirmed at the June 25, 2021 pre-trial conference (the parties will

submit a stipulation and order of dismissal to the Court).

(3) All claims against Ms. Sullivan-Dudzic, including a 42 U.S. C. § 1983 “deprivation of her right to liberty” claim against Ms. Sullivan-Dudzic in her individual capacity, which she dismissed last week (the parties will submit a stipulation and order of dismissal to the Court).

(4) 42 U.S. C. § 1983 “deprivation of her right to liberty” claim against Susan Stone, in her individual capacity, for placing a modified firehose on the door hinge and “confining her with a violent student.” (Dkt. 6 at 38:22-25). Plaintiff contends that Susan Stone violated her Fourteenth Amendment due process rights and with deliberate indifference affirmatively placed her in a foreseeable “state-created danger.” (Dkt. 139 at 27). BSD stipulated that Ms. Stone was acting under color of state law, and that she was not engaged in any “purely private conduct.”

(5) 42 U.S. C. § 1983 “deprivation of her right to liberty” claim against BSD for (1) its “practice or custom” of allowing Susan Stone (as ratified by Linda Sullivan-Dudzic, who had final policymaking authority for BSD) to place a modified firehose on the door hinge and “confining her with a violent student” and “with no way to protect herself” (Dkt. 6 at 39:18-40:8; *see also* Dkt. 139 at 29); and (2) inadequate training for handling violent students that led Susan Stone to deprive her “of her rights.”

(6) Negligence against BSD and Susan Stone for “refusing” to provide a one-to-one paraeducator for G.C. in violation of his Individual Education Plan; confining her on September 26 in the classroom with G.C., and “failing to protect Plaintiff from harm”; failing to provide her training and support necessary to work with violent students; and “escalating the danger” to her by “inconsistently implementing” BSD

1 policies and procedures. (Dkt. 6 at 38:11-15).

2 (7) Retaliation under RCW 49.60.210(1) (WLAD) against BSD and Susan Stone for  
3 confining her in the classroom on September 26, 2017 with G.C., and failing to  
4 provide 1-to-1 paraeducator support after she reported concerns about inappropriate  
5 conduct between an educator and a student. Ms. Maki contends that the foregoing  
6 acts or omissions “deprived her of rights and privileges under the law.” (Dkt. 38:11-  
7 17)  
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9 a. Plaintiff also contends that a BSD paraeducator, Tammy LaLanne, retaliated  
10 against her. Ms. LaLanne was Ms. Maki’s colleague—not her supervisor—  
11 thus there is no viable cause of action for retaliation against Ms. LaLanne.  
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13 Based on the foregoing allegations, Ms. Maki seeks damages for lost past and future  
14 earnings and benefits; physical harm; and emotional distress.

15 The Defendants vigorously deny her claims, and anticipates a defense verdict.

16 DATED this 28<sup>th</sup> day of June, 2021.

17 Respectfully submitted,  
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19 **FLOYD PFLUEGER & RINGER, P.S.**

20 s/ Francis S. Floyd

21 Francis S. Floyd, WSBA No. 10642

22 Danielle P. Smith, WSBA No. 49165

23 *Attorneys for Defendants*  
24  
25  
26  
27



DECLARATION OF SERVICE

I declare under penalty of perjury and the laws of the United States of America that on the below date, I delivered a true and correct copy of the foregoing via the method indicated below to the following parties:

Deborah A. Boe	<i>Counsel for Plaintiff</i>	<input type="checkbox"/> Via Messenger
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DATED this 28th day of June, 2021 at Seattle, Washington.

s/ Sean C. Moore  
Sean C. Moore, Legal Assistant